

Application No. 09/221,099
 Attorney Docket No.: 98-112

R E M A R K S

Claims 1 - 91 were pending in the present application.
 Claims 1 - 91 were rejected.
 Claims 1, 17, 27, 42, 53, 55, 60, 68, 75, 77 and 79 - 91 are independent.
 Independent claims 1, 17, 27, 42, 53 and 55 are method claims.
 Independent claims 60, 68, 75 and 77 are apparatus claim
 Independent claims 79 - 83 are apparatus claims in means plus function form.
 Independent claims 84 - 91 are software code and computer readable medium claims.

Section 102 Rejections

Claims 1 - 91 stand rejected as anticipated by Fraser, WO 97/08638. Applicants respectfully traverse the Examiner's Section 102 rejection.

1. Independent Claims

All of the independent claims stand rejected. Applicants have amended each independent claim in a manner that more clearly distinguishes over Fraser.

Fraser discloses a system intended to address the concerns of a single retailer, and does not involve any third parties at all. Specifically, Fraser is concerned with allowing a retailer to advertise to its customers (e.g., Fraser, page 1, lines 20 - 21) and allowing the retailer to choose which particular merchandise it will promote (e.g., Fraser, page 3, lines 12 - 15; page 4, lines 10 - 12; page 6, line 19 - page 7, line 4; page 8, line 19 - page 9, line 10; page 9, lines 14 - 19). For example, a supermarket could promote its own "house brand" of a product over a product of third party manufacturer. Fraser, page 3, lines 12 - 15.

By contrast, the present invention allows a manufacturer to market directly to customers during a sales transaction. Specification, page 5, lines 1 - 2. Thus, one embodiment of the present invention provides manufacturers with a greater opportunity to compete with other manufacturers at retail locations. Specification, page 5, lines 9 - 11. In one embodiment of the present invention, the manufacturer may determine that it would be more profitable if the customer were to purchase the manufacturer's product rather than a competitor's product. Specification, page 5, lines 25 - 26. Similarly, a manufacturer may determine that it would be more profitable if the customer were to purchase a different one of its own products rather than the one the customer has selected. Specification, page 5, lines 26 - 28.

There is no hint or suggestion in Fraser that a manufacturer should be benefited in any way, much less of allowing a manufacturer to market to customers at a retailer during a sales transaction. For example, while in Fraser the retailer judges two products as identical for purposes of recommending a substitution, in the present invention such determination may be made by one or more remote manufacturers. In Fraser there is no hint or suggestion of providing manufacturers with a greater opportunity to compete with other manufacturers at retail locations. Similarly, in Fraser there is no hint or suggestion of a manufacturer determining that it would be more profitable if the customer were to purchase the manufacturer's product rather than a competitor's product.

In fact, Fraser teaches away from the present invention by suggesting that the system of Fraser allows a retailer to promote its own brand over those of manufacturers. Fraser, page 3, lines 12 - 15. Clearly, this teaches away from the present invention, which aids manufacturers by allowing a manufacturer to market directly to customers during a sales transaction. Specification, page 5, lines 1 - 2.

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1.1. Amended Independent Claims 1, 17, 60, 79, 80, 84 - 87

Independent Claims 1, 17, 60, 79, 80, 84 - 87 have been amended to clarify that the server is a remote server of a manufacturer. Thus, for example, the method of claim 1 could be performed by a retailer that is remote from the manufacturer, and that retailer would transmit transaction data to the remote manufacturer.

1.2. Amended Independent Claims 27, 68, 81

Independent Claims 27, 68, 81 have been amended to clarify that the interaction is with a remote retailer. Thus, for example, the method of claim 27 could be performed by a manufacturer that is remote from the retailer, and that manufacturer would receive transaction data from the remote retailer.

1.3. Amended Independent Claims 42, 53, 75, 82, 88, 89

Independent Claims 42, 53, 75, 82, 88, 89 have been amended to clarify that the interaction is with a remote point of sale terminal of a retailer. Thus, for example, the method of claim 42 could be performed by a manufacturer that is remote from the retailer, and that manufacturer would receive transaction data from a remote point of sale terminal of the retailer.

1.4. Amended Independent Claims 55, 77, 83, 90, 91

Independent Claims 55, 77, 83, 90, 91 have been amended to clarify that the interaction is with a remote server of a retailer. Thus, for example, the method of claim 55 could be performed by a manufacturer that is remote from the retailer, and that manufacturer would receive transaction data from a remote server of the retailer.

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2. Dependent Claims

All dependent claims are rejected on one of three bases.

Dependent claims **4, 19 and 31** are rejected as anticipated by Fraser, specifically the abstract and FIGS. 1, 2 and 4 - 6.

Dependent claims **12, 23, 39, 65 and 73** are rejected as anticipated by Fraser, specifically the abstract and FIG. 4.

The remaining dependent claims, claims **2 - 3, 5 - 11, 13 - 16, 18, 20 - 22, 24 - 26, 28 - 30, 32 - 38, 40 - 41, 43 - 52, 54, 56 - 59, 61 - 64, 66 - 67, 69 - 72, 74, 76 and 78**, are rejected on pages 3 - 4 of the Office Action, in a section in support of the rejection of claims **1 - 3, 5 - 11, 13 - 18, 20 - 22, 24 - 30, 32 - 38, 40 - 64, 66 - 72 and 74 - 79**. However, this section does not refer to any of the limitations found in any of dependent claims **2 - 3, 5 - 11, 13 - 16, 18, 20 - 22, 24 - 26, 28 - 30, 32 - 38, 40 - 41, 43 - 52, 54, 56 - 59, 61 - 64, 66 - 67, 69 - 72, 74, 76 and 78**. Accordingly, the Examiner has not met the *prima facie* burden in rejecting these claims.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of unpatentability. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of patentability.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. MPEP 2131.

Since the specific limitations of any of dependent claims **2 - 3, 5 - 11, 13 - 16, 18, 20 - 22, 24 - 26, 28 - 30, 32 - 38, 40 - 41, 43 - 52, 54, 56 - 59, 61 - 64, 66 - 67, 69 - 72, 74, 76 and 78** are not addressed at all, much less shown as anticipated by or obvious in light of Fraser, the Examiner has not met the *prima facie* burden in rejecting these dependent claims. Accordingly, Applicant need not submit any evidence of patentability of these claims.

Nevertheless, the independent claims have all been amended to include additional limitations, and accordingly all dependent claims likewise include these additional limitations and are allowable at least for the same reasons as the independent claims. Applicants reserve the right to pursue the subject matter of the originally filed dependent claims in a continuing application.

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Conclusion

For the foregoing reasons it is submitted that all of the claims are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Dean Alderucci at telephone number 203-461-7337 or via electronic mail at Alderucci@WalkerDigital.com.

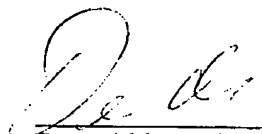
Petition for Extension of Time to Respond

Applicants hereby petition for a **two-month** extension of time with which to respond to the Office Action. Please charge \$390.00 for this petition to our Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Response, or credit any overpayment to Deposit Account No. 50-0271.

If an extension of time is required, or if an additional extension of time is required in addition to that requested in a petition for an extension of time, please grant a petition for that extension of time which is required to make this Response timely, and please charge any fee for such extension to Deposit Account No. 50-0271.

Respectfully submitted,

May 18, 2001
Date



Dean Alderucci
Attorney for Applicants
Registration No. 40,484
Alderucci@WalkerDigital.com
Walker Digital Corporation
Five High Ridge Park
Stamford, CT 06905-1326
203-461-7337 / voice
203-461-7300 / fax

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**C L A I M A M E N D M E N T S
M A R K E D U P F O R M**

Please **AMEND** the claims as follows:

1. (AMENDED) A method for promoting a sale of a substitute product, comprising:
receiving transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal;
transmitting said transaction data to a remote server of a manufacturer during a transaction session;
receiving information regarding a substitute product from said remote server; and
offering said substitute product to said consumer before the transaction session terminates.
17. (AMENDED) A method for promoting a sale of a substitute product, comprising:
receiving transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal;
transmitting said transaction data to a remote server of a manufacturer during a transaction session for determination of a possible substitute product to be offered to said consumer;
upon receipt of information regarding a substitute product from said remote server, offering said substitute product to said consumer before the transaction session terminates;
consummating a sale of said original product if at least one of
 - (a) no information regarding said substitute product is received from said remote server, and
 - (b) said consumer declines said offering; andconsummating a sale of said substitute product upon acceptance by said consumer of said offering.
27. (AMENDED) A method for promoting a sale of a substitute product, comprising:
receiving, from a remote retailer, transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal of the remote retailer during a transaction session;
determining a substitute product to be offered to said consumer; and
offering said substitute product to said consumer before the transaction session terminates.
40. (AMENDED) The method of claim 27 further comprising transmitting to [said] a server inventory information of a potential substitute of said original product.

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42. (AMENDED) A method of promoting a sale of a substitute product to a consumer, comprising:
receiving, from a remote point of sale terminal of a retailer, transaction data regarding an original product presented for purchase by a consumer during a transaction session;
determining a substitute product to be offered to said consumer; and
transmitting information regarding said substitute product to said remote point of sale terminal for transmission to said consumer, before the transaction session terminates.
53. (AMENDED) A method of promoting a sale of a substitute product to a consumer, comprising:
receiving, from a remote point of sale terminal of a retailer, transaction data regarding an original product presented for purchase by a consumer during a transaction session;
determining whether a substitute product is to be offered to said consumer;
if a substitute product is to be offered to said consumer, transmitting information regarding said substitute product to said remote point of sale terminal for transmission to said consumer, before the transaction session terminates.
55. (AMENDED) A method of promoting a sale of a substitute product to a consumer, comprising:
receiving, from a remote server of a retailer, transaction data regarding an original product presented for purchase by a consumer during a transaction session;
determining a substitute product to be offered to said consumer; and
transmitting information regarding said substitute product to said remote server for transmission to said consumer, before the transaction session terminates.
60. (AMENDED) An apparatus for promoting a sale of a substitute product, comprising:
a storage device; and
a processor disposed in communication with the storage device;
the storage device storing a program for controlling the processor; and
the processor configured to
receive transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal;
transmit said transaction data to a remote server of a manufacturer during a transaction session;
receive information regarding a substitute product from said remote server; and
transmit an offer of said substitute product to said consumer before the transaction session terminates.

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68. (AMENDED) An apparatus for promoting a sale of a substitute product, comprising:
a storage device; and
a processor disposed in communication with the storage device;
the storage device storing a program for controlling the processor; and
the processor configured to
receive, from a remote retailer, transaction data regarding an original product
presented for purchase by a consumer at a point of sale terminal of the remote retailer during a
transaction session;
determine a substitute product to be offered to said consumer; and
transmit an offer of said substitute product to said consumer before the transaction
session terminates.
75. (AMENDED) An apparatus for promoting a sale of a substitute product, comprising:
a storage device; and
a processor disposed in communication with the storage device;
the storage device storing a program for controlling the processor; and
the processor configured to
receive, from a remote point of sale terminal of a retailer, transaction data regarding
an original product presented for purchase by a consumer during a transaction session;
determine a substitute product to be offered to said consumer; and
transmit information regarding an offer of said substitute product to said remote
point of sale terminal for transmission to said consumer, before the transaction session terminates.
77. (AMENDED) An apparatus for promoting a sale of a substitute product, comprising:
a storage device; and
a processor disposed in communication with the storage device;
the storage device storing a program for controlling the processor; and
the processor configured to
receive, from a remote server of a retailer, transaction data regarding an original
product presented for purchase by a consumer during a transaction session;
determine a substitute product to be offered to said consumer; and
transmit information regarding an offer of said substitute product to said remote
server for transmission to said consumer, before the transaction session terminates.
79. (AMENDED) An apparatus for promoting a sale of a substitute product, comprising:
means for receiving transaction data regarding an original product presented for purchase by
a consumer at a point of sale terminal;
means for transmitting said transaction data to a remote server of a manufacturer during a
transaction session;
means for receiving information regarding a substitute product from said remote server; and
means for transmitting an offer of said substitute product to said consumer before the
transaction session terminates.

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80. (AMENDED) An apparatus for promoting a sale of a substitute product, comprising:
means for receiving transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal;
means for transmitting said transaction data to a remote server of a manufacturer during a transaction session for determination of a possible substitute product to be offered to said consumer;
means for transmitting an offer of said substitute product to said consumer before the transaction session terminates;
means for consummating a sale of said original product if at least one of (a) no information regarding said substitute product is received from said remote server, and (b) said consumer declines said offering; and
means for consummating a sale of said substitute product upon acceptance by said consumer of said offering.
81. (AMENDED) An apparatus for promoting a sale of a substitute product, comprising:
means for receiving, from a remote retailer, transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal of the remote retailer during a transaction session;
means for determining a substitute product to be offered to said consumer ; and
means for transmitting an offer of said substitute product to said consumer before the transaction session terminates.
82. (AMENDED) An apparatus for promoting a sale of a substitute product to a consumer, comprising:
means for receiving, from a remote point of sale terminal of a retailer, transaction data regarding an original product presented for purchase by a consumer during a transaction session;
means for determining a substitute product to be offered to said consumer; and
means for transmitting information regarding an offer of said substitute product to said remote point of sale terminal prior to completion of said transaction session.
83. (AMENDED) A method of promoting a sale of a substitute product to a consumer, comprising:
means for receiving, from a remote server of a retailer, transaction data regarding an original product presented for purchase by a consumer during a transaction session;
means for determining a substitute product to be offered to said consumer; and
means for transmitting information regarding an offer of said substitute product to said remote server for transmission to said consumer.

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84. (AMENDED) Computer executable software code stored on a computer readable medium, the code comprising:
- code for receiving transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal;
 - code for transmitting said transaction data to a remote server of a manufacturer during a transaction session;
 - code for receiving information regarding a substitute product from said remote server; and
 - code for transmitting an offer of said substitute product to said consumer before the transaction session terminates.
85. (AMENDED) A computer readable medium having computer executable software code stored thereon, the code comprising:
- code for receiving transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal;
 - code for transmitting said transaction data to a remote server of a manufacturer during a transaction session;
 - code for receiving information regarding a substitute product from said remote server; and
 - code for transmitting an offer of said substitute product to said consumer before the transaction session terminates.
86. (AMENDED) Computer executable software code stored on a computer readable medium, the code comprising:
- code for receiving transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal;
 - code for transmitting said transaction data to a remote server of a manufacturer during a transaction session for determination of a possible substitute product to be offered to said consumer;
 - code for transmitting an offer of said substitute product to said consumer before the transaction session terminates;
 - code for consummating a sale of said original product if at least one of (a) no information regarding said substitute product is received from said remote server, and (b) said consumer declines said offering; and
 - code for consummating a sale of said substitute product upon acceptance by said consumer of said offering.

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87. (AMENDED) A computer readable medium having computer executable software code stored thereon, the code comprising:
- code for receiving transaction data regarding an original product presented for purchase by a consumer at a point of sale terminal;
 - code for transmitting said transaction data to a remote server of a manufacturer during a transaction session for determination of a possible substitute product to be offered to said consumer;
 - code for offering said substitute product to said consumer before the transaction session terminates;
 - code for consummating a sale of said original product if at least one of (a) no information regarding said substitute product is received from said remote server, and (b) said consumer declines said offering; and
 - code for consummating a sale of said substitute product upon acceptance by said consumer of said offering.
88. (AMENDED) Computer executable software code stored on a computer readable medium, the code comprising:
- code for receiving, from a remote point of sale terminal of a retailer, transaction data regarding an original product presented for purchase by a consumer during a transaction session;
 - code for determining a substitute product to be offered to said consumer; and
 - code for transmitting information regarding an offer of said substitute product to said remote point of sale terminal for transmission to said consumer, before the transaction session terminates.
89. (AMENDED) A computer readable medium having computer executable software code stored thereon, the code comprising:
- code for receiving, from a remote point of sale terminal of a retailer, transaction data regarding an original product presented for purchase by a consumer during a transaction session;
 - code for determining a substitute product to be offered to said consumer; and
 - code for transmitting information regarding an offer of said substitute product to said remote point of sale terminal for transmission to said consumer, before the transaction session terminates.
90. (AMENDED) Computer executable software code stored on a computer readable medium, the code comprising:
- code for receiving, from a remote server of a retailer, transaction data regarding an original product presented for purchase by a consumer during a transaction session;
 - code for determining a substitute product to be offered to said consumer; and
 - code for transmitting information regarding an offer of said substitute product to said remote server for transmission to said consumer, before the transaction session terminates.
91. (AMENDED) A computer readable medium having computer executable software code stored thereon, the code comprising:
- code for receiving, from a remote server of a retailer, transaction data regarding an original product presented for purchase by a consumer during a transaction session;
 - code for determining a substitute product to be offered to said consumer; and
 - code for transmitting information regarding an offer of said substitute product to said remote server for transmission to said consumer, before the transaction session terminates.